

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 26 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

)
)
)
)

CC Docket No. 96-45
(Report to Congress)

To: The Common Carrier Bureau

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Joe D. Edge
Tina M. Pidgeon
DRINKER BIDDLE & REATH LLP
901 15th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 842-8800

January 26, 1998

No. of Copies rec'd
List A B C D E

SUMMARY

Puerto Rico Telephone Company ("PRTC") has identified two primary aspects of the Commission's universal service program that should be addressed in the Commission's Report to Congress. First, the universal service program fails to provide for affordable service to insular areas. Second, the federal scheme thrusts the obligation to provide three-fourths of universal service funding to the states, making federal universal service simply a fund to reduce access charges to interexchange carriers, not to ensure the provisions of basic universal service.

Section 254(b)(3) requires that the universal service fund satisfy the principle that service be affordable for insular areas, as well as high cost areas and rural areas. The Commission has recognized this obligation only with respect to rural carriers serving insular areas. However, the plain language of the statute makes no such distinction, and neither should the Commission's regulations. For the same reasons that it is not appropriate to transition immediately to a proxy model cost methodology for rural carriers, carriers serving insular areas should not be subject to the modeling process until a proper model is developed. Thus, the Commission should implement the requirements of Section 254(b)(3) by extending to carriers serving insular areas the same treatment accorded to carriers serving rural areas.

Second, Section 254 establishes the federal universal service fund as the primary fund for ensuring affordable telecommunications service. Thus, any state support must be

provided in a manner "not inconsistent" with the federal fund. The twenty-five percent restriction on federal universal service support violates the statute because it places the primary universal service obligation upon states and has the effect of providing support only for interstate access services. Therefore, the Commission should report to Congress that it is revising the funding limitation.

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	i
I. SECTION 254(b)(3) PLAINLY REQUIRES THAT CUSTOMERS IN INSULAR AREAS SHOULD HAVE ACCESS TO AFFORDABLE SERVICE BY MEANS OF THE FEDERAL UNIVERSAL SERVICE FUND	2
A. Customers in Insular Areas Should Receive the Benefits of Universal Service Intended by Congress	3
B. Costs for Carriers Serving Insular Areas Are Not Likely To Be Estimated Appropriately Through a Cost Proxy Model	4
II. THE LIMITATION OF FEDERAL UNIVERSAL SERVICE FUNDING IS CONTRARY TO UNIVERSAL SERVICE PRINCIPLES	8
III. CONCLUSION	11

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	(Report to Congress)

To: The Common Carrier Bureau

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC") submits its Comments to assist the Commission in drafting its Report to Congress regarding a number of universal services issues. Specifically, PRTC addresses the following:

- who is eligible under sections 254(e) of the Act to receive specific Federal universal service support for the provision of universal service, and the consistency with which the Commission has interpreted each of those provisions of section 254; and
- the Commission's decisions regarding the percentage of universal service support provided by Federal mechanisms and the revenue base from which the support is derived.¹

As PRTC has set forth in comments and petitions for reconsideration, the Commissions' universal service program violates Section 254 in two primary ways. First, the universal service program fails to provide for affordable service to insular areas. Second, the federal scheme thrusts the obligation to provide three-fourths of universal service funding to the states, making federal universal service simply a fund to reduce

1. Public Notice, "Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996," DA 98-2 (rel. January 5, 1998) at 2.

access charges to interexchange carriers, not to ensure the provisions of basic universal service.

I. SECTION 254(b)(3) PLAINLY REQUIRES THAT CUSTOMERS IN INSULAR AREAS SHOULD HAVE ACCESS TO AFFORDABLE SERVICE BY MEANS OF THE FEDERAL UNIVERSAL SERVICE FUND

Congress specifically required that persons in rural, insular, and high cost areas would have available to them affordable service as compared to the rates for services provided in urban areas. In this regard, section 254(b)(3) states that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.²

However, the Commission diverged significantly from the plain language of the statute in that it has made specific provisions for universal service distributed to carriers serving rural areas, but it has failed to provide any similar provisions for carriers serving insular areas. Instead, the Commission has effectively read Congress' direction regarding insular areas out of the Act. This interpretation of the statutory mandate is contrary to the plain meaning of the statute and basic tenets of

2. 47 U.S.C. § 254(b)(3) (emphasis added).

statutory construction.³ PRTC agrees with Commissioner Furchtgott-Roth, who has advocated that section 254 "should be precisely implemented within the letter of the law, and fully implemented according to all — not just part — of its language."⁴

A. Customers in Insular Areas Should Receive the Benefits of Universal Service Intended by Congress

Congress appropriately recognized insular areas have unique universal service needs in including "insular" in section 254(b)(3), in addition to "rural" and "high cost" to target those areas particularly in need of universal service support. According to this principle, the Joint Board and the Commission were to create a universal service system such that consumers in insular areas, and in rural areas, and in high cost areas receive affordable service at rates comparable to consumers in urban

3. It is a basic tenet of statutory construction that Congress intends for each word in a statute to have meaning. See United States v. McGoff, 831 F.2d 1071, 1080 (D.C. Cir. 1987) (finding that a court will "assume that Congress intended that language which it chose to employ actually was to have meaning"). From this assumption it follows that "effect must be given, if possible, to every word, clause and sentence of a statute . . . so that no part will be inoperative or superfluous, void or insignificant." National Assoc. of Recycling Indus., Inc. v. I.C.C., 660 F.2d 795, 799 (D.C. Cir. 1981) (citations omitted). Therefore, when promulgating regulations to implement the statutory language, an agency should "giv[e] effect to each word and mak[e] every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." Implementation of the Telecommunications Act of 1996; Telemessaging, Electronic Publishing, and Alarm Monitoring Services, Second Report and Order, 12 FCC Rcd 3824, 3830 n.31 (citing Lake Cumberland Trust, Inc. v. E.P.A., 954 F.2d 1218, 1222 (6th Cir. 1992)).

4. Dissenting Statement of Commissioner Harold Furchtgott-Roth, Fourth Order on Reconsideration, FCC 97-420 (rel. December 30, 1997).

areas.⁵ The Commission, however, has enacted this principle only for carriers that serve a high cost area — as randomly identified in accordance with an untested, hypothetical model result — or for rural carriers that meet the definition set forth in Section 3(37) of the Communications Act.⁶ Virtually no provision has been made for insular areas, unless consumers in those areas happen to be served by rural carriers. This outcome is contrary to the plain language of the statute.

B. Costs for Carriers Serving Insular Areas Are Not Likely To Be Estimated Appropriately Through a Cost Proxy Model

At issue here is the ability to determine the necessary universal service support for carriers facing unique circumstances in their efforts to provide affordable service. Theoretically, when support is appropriately calculated, the carrier will be better able to implement the universal service mandate. In some cases, however, the appropriate calculation may

5. Affordable service is a key principle of Section 254 of the Act. 47 U.S.C. § 254(b)(1). With a seventy-six percent penetration rate, it is clear that rates in Puerto Rico cannot be deemed affordable, even though PRTC has not increased its rates since the early 1980s. The average per capita income in Puerto Rico is half that of the national average, indicating that continued or increased universal service support is necessary to increase telephone subscribership on the island. PRTC has argued that the Commission has not adequately addressed affordability as required by Section 254, even for areas like Puerto Rico that are far below the national average service penetration rate.

6. PRTC notes that section 254(b)(3) does not refer to "rural carriers," a term which has a specific statutory meaning, but to rural areas. Thus, even in providing a transitional period to a proxy methodology for rural carriers, it cannot be said that the Commission has complied assiduously with the language of the statute.

be beyond the capabilities of a proxy model. In this regard, the Joint Board and the Commission already have recognized that the costs of rural carriers may not be best reflected by the initial proxy model versions.⁷ The same is true for carriers serving insular areas, not only rural carriers serving these areas.

Recent proxy model data runs for Puerto Rico support this contention. As of mid-December, both the Hatfield and BCPM models were populated with Puerto Rico data, yielding what can only be termed as irrational results. According to the BCPM, PRTC's total universal service need is \$37,055,340. The Hatfield model forecasts that PRTC should receive only \$685,020 in universal service support. Considering that federal universal service support is presently formulated to fund only one-quarter of this need,⁸ federal support predicted by the models is \$9,263,835 and \$171,255, respectively. In 1997, PRTC received over \$107 million dollars in combined universal service and long term support. Therefore, the BCPM reduces PRTC's universal service support to less than one-tenth of its 1997 amount; the Hatfield model reduces PRTC's support to slightly more than one-thousandth of its previous amount. The possible reductions in USF support anticipated by these proxy model results could seriously impact upon PRTC's ability to provide reasonably priced universal service to an island that has only recently achieved

7. See Fourth Order on Reconsideration at ¶¶ 74, 78 (citing First Report and Order, 12 FCC Rcd 8776, 8917, 8936, 8943 (1997)).

8. See Discussion, Part II infra.

seventy-six percent penetration, compared to ninety-four percent penetration nationwide.⁹

Just as the Commission has concluded that Congress' language regarding services to rural areas should be implemented with specificity, these model results demonstrate that the language regarding insular areas should be implemented with specificity as well. In the Recommended Decision, the Joint Board recognized a distinction between rural carriers in general and rural carriers serving insular areas, focusing particularly on the difficulty of accurately estimating carrier costs in insular areas. The Joint Board found that "while we believe that proxy models may provide an appropriate determination of costs on which to base high cost support, we are less certain that they may do so for rural carriers in Alaska and insular areas."¹⁰

PRTC agrees with the Commission's subsequent finding that there are subsets of carriers — i.e., rural carriers — serving high cost areas that should not immediately be subject to the proxy model methodology. Indeed, the Commission recently reaffirmed this finding in its recent Fourth Order on Reconsideration, concluding that

9. Telephone Subscribership in the United States, FCC, Common Carrier Bureau, Industry Analysis Division (January 1998) at Table 1. As the Commission stated, "insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations." First Report and Order, 12 FCC Rcd at 8839 (¶ 112).

10. Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 240 (¶ 298) (1996).

because the cost models in the record of this proceeding produced a higher margin of error for rural carriers, the Commission concluded that rural carriers should not begin their transition to the use of a forward-looking economic cost mechanism when the non-rural incumbent LECs transition to their new mechanism in 1999.¹¹

This same rationale should be extended to those carriers serving insular areas until a proxy model has been developed that can predict reasonable costs of providing services to these areas. In this regard, PRTC disagrees with the Commission's failure to recognize that carriers serving insular areas should receive similar consideration as rural carriers, based on the clear language of the statute.

This distinction between carriers serving insular areas and high cost areas generally is a proper one under the statute and should not be unjustifiably narrowed by limiting particular treatment of insular areas to those served by rural carriers. Rural areas receive a separate designation under Section 254(b)(3), distinct from high cost areas and insular areas. In this instance, the distinction can be best effectuated by recognizing that the difficulty in measuring costs for insular areas necessitates a longer transition to the proxy model methodology, if at all.

11. Fourth Order on Reconsideration at ¶ 78.

II. THE LIMITATION OF FEDERAL UNIVERSAL SERVICE FUNDING IS CONTRARY TO UNIVERSAL SERVICE PRINCIPLES

The Commission has determined that the federal universal service support will be available only for twenty-five percent of the difference between a carrier's forward looking economic cost of providing supported services and the national revenue benchmark.¹² The limitation of support pushes the majority of the universal service funding obligations upon states and fails to ensure that basic universal services will be made available at affordable rates. Such a result is contrary to the express universal service principle that telecommunications services be made available at affordable rates.¹³

Section 254 envisions a federal universal service program to be established by the Joint Board and the Commission.¹⁴ These efforts were to be guided by specific universal service principles.¹⁵ States, however, are permitted to develop supplemental funds that are "not inconsistent" with the federal program.¹⁶ If it were the intention of Congress to shoulder states with seventy-five percent of the universal service burden, it would not be practical essentially to bind them to the FCC's universal service rules. Thus, the federal universal service

12. First Report and Order, 12 FCC Rcd at 8925 (¶ 269).

13. See 47 U.S.C. §§ 254(b)(1), (b)(3), (i).

14. Id., § 254(a).

15. Id., § 254(b).

16. Id., § 254(f).

fund, as crafted, falls short of providing the support for affordable services envisioned by Congress.

In its operation, the federal universal service fund would have the result only of making interexchange services affordable, rather than basic, local telecommunications services. In its Access Charge Reform Order, the Commission states:

Consistent with our decision in the Universal Service Order to fund only interstate costs through the federal universal service fund, we direct incumbent LECs to use any universal service support received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges.¹⁷

This finding is fundamentally inconsistent with the plain language of Section 254 of the Communications Act, which requires that telecommunications services — not limited to interstate, interexchange services — be made affordable through universal service support established by the Joint Board and the FCC under the Act.¹⁸

The Commission's related directive that LECs apply universal service support to their interstate revenue requirement is contrary to the goals of universal service. The guiding principle of the Commission's universal service mandate is that "quality services should be available at just, reasonable, and

17. Access Charge Reform, CC Docket No. 96-262, First Report and Order, FCC 97-158 (rel. May 16, 1997) at ¶ 381.

18. See 47 U.S.C. § 254(b)(3).

affordable rates."¹⁹ Congress further described that all customers in all regions should have access to "telecommunications and information services, including interexchange service and advanced information services" at rates comparable to those in urban areas.²⁰ According to these statutory provisions, it is not appropriate for the Commission to limit arbitrarily the benefits of universal service support solely to the rates for access charges paid by interexchange carriers.

The plain language of the statute makes clear that Congress intended the universal service fund to provide support for a range of telecommunications services included within the definition of universal service. The Commission's universal service program and access charge rules breaches this principle by effectively limiting the applicability of federal universal service support to the interstate access revenue requirements. Although it is clear that support for interexchange service did not have to be excluded from receipt of any universal service support, interexchange service certainly should not be supported to the explicit exclusion of what the Joint Board and the Commission have indicated to be a primary objective — the affordability of basic (i.e., local) services for all consumers.

However, limiting the federal universal service obligation to one-quarter of the demonstrated need — and thus, the benefits

19. Id., § 254(b)(1).

20. Id., § 254(b)(3) (emphasis added).

of federal USF to the interstate access revenue requirement — does not satisfy the statute or the Commission's stated goals. Instead, it will have the effect of lowering access charges to interexchange carriers that may or may not pass such savings through to local consumers. Even if such a flow-through could be guaranteed, however, it will never reach those consumers who rarely, if ever, initiate interstate long distance calls. Yet, these are the customers to whom universal service support truly makes a difference between subscribing to basic phone service or not. In this regard, the Commission has not explained how restricted federal USF support delivered through a reduction in access charges will "ensure" that universal service is "affordable."

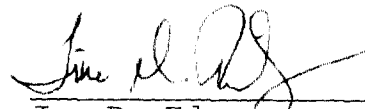
III. CONCLUSION

The Commission's universal service program must be revised in two primary ways to comply with Section 254 of the Act. First, Section 254(b)(3) requires that the universal service fund satisfy the principle that service be affordable for insular areas, as well as high cost areas and rural areas. The Commission has recognized this obligation only with respect to rural carriers serving insular areas. However, the plain language of the statute makes no such distinction, and neither should the Commission's regulations. Thus, the Commission could implement the requirements of Section 254(b)(3) by extending to

carriers serving insular areas the same treatment accorded to carriers serving rural areas.

Second, Section 254 establishes the federal universal service fund as the primary fund for ensuring affordable telecommunications service. Thus, any state support must be provided in a manner "not inconsistent" with the federal fund. The twenty-five percent restriction on federal universal service support violates the statute because it places the primary universal service obligation upon states and has the effect of providing support only for interstate access services. Therefore, the Commission should report to Congress that it is revising the funding limitation.

Respectfully submitted,



Joe D. Edge
Tina M. Pidgeon
DRINKER BIDDLE & REATH LLP
901 15th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 842-8800

Attorneys for
PUERTO RICO TELEPHONE COMPANY

Dated: January 26, 1998

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments of Puerto Rico Telephone Company was sent by hand-delivery this 26th day of January, 1998, to the following:

Magalie Roman Salas
Secretary
Federal Communications
Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Sheryl Todd
Universal Service Branch
Federal Communications
Commission
2100 M Street, N.W., 8th Floor
Washington, D.C. 20554

ITS
1231 20th Street, NW
Room 102
Washington, DC 20037

A handwritten signature in cursive script, appearing to read "Dottie E. Holman", is written over a horizontal line.

Dottie E. Holman